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Fifth session of the Forum on Business and Human Rights: summary of discussions

Note by the Secretariat

The present document, prepared in accordance with Human Rights Council resolutions 17/4 and 26/22, contains an overview of the discussions held at the fifth annual session of the Forum on Business and Human Rights, held from 14 to 16 November 2016. It should be read together with the Forum programme, session concept notes, statements and session web recordings, which are available on the Forum website.[1]

[1] www.ohchr.org/EN/Issues/...

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Fifth session of the Forum on Business and Human Rights: summary of discussions

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I. Introduction

A. Background

1. Since its first session in 2012, the Forum on Business and Human Rights has become the world's biggest event on business and human rights. It was established by the Human Rights Council in its resolution 17/4, with the mandate to discuss trends and challenges in the promotion and implementation of the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex); to promote dialogue and cooperation on issues linked to business and human rights, including challenges faced in particular sectors, operational environments or in relation to specific rights or groups; and to identify good practices.

2. The Forum is organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and guided by the Working Group on the issue of human rights and transnational corporations and other business enterprises. The programme for 2016 included three plenary sessions and 64 parallel sessions. The latter sessions were organized by the Working Group, OHCHR and external organizations, on the basis of the outcome of extensive consultations, and of some 160 submitted session proposals.

3. The President of the Human Rights Council appointed Sergei Alexandrovich Ordzhonikidze as Forum chair. Pursuant to Council resolution 17/4, the chair was responsible for the preparation of the present overview of the discussions held by the Forum.

B. Participation

4. The Forum was attended by more than 2,000 participants from 140 States, up from some 1,000 participants from 80 States registered at the first session of the Forum held in 2012. Some 55 per cent of registered participants were women.

Category of participating stakeholders (%)	
Academic	12
Business enterprises, business/industry associations, consultancies, law firms, investors	24
Civil society organizations, affected stakeholders, trade unions and indigenous peoples groups	30
Multi-stakeholder initiatives	2
National human rights institutions	3
Professional association	1
State	14
United Nations/intergovernmental organizations	7
Other	6

C. Theme of the 2016 Forum

5. The title of the 2016 Forum was "Leadership and leverage: embedding human rights in the rules and relationships that drive the global economy". The programme reflected four key propositions:

- States are expected to "lead by example"
- Leadership and leverage are to be exercised by all enterprises that make up the value chain (including parent companies, suppliers and financial institutions)
- We need better models of action and accountability to drive business respect for human rights and companies' positive contribution to the Sustainable Development Goals
- We need to step up efforts to improve access to remedy for victims of business-related human rights abuses and protect those in particularly vulnerable situations

6. The above-mentioned propositions were discussed during plenary and parallel sessions. The latter were broadly grouped under the following general headings or "tracks":

- State leadership and leverage
- Business leadership and leverage
- Money and finance
- New models
- Local action

II. Overview of discussions

A. State leadership and leverage

1. Importance of government leadership

7. Discussions held during the Forum session highlighted the view that, in order to advance the promotion and implementation of the Guiding Principles, States had to put people and human rights at the heart of their development efforts. It was stressed that Governments had to be a stronger link in the business and human rights agenda from the very beginning. A "government forum" was called for to shed light on what government actors – relevant ministries, departments and agencies – could do to accelerate and scale up the implementation of the Guiding Principles.

8. Different aspects of government leadership were discussed, such as policy and regulatory developments for embedding corporate respect for human rights in investment, supply chains and economic activity. Relevant corporate tax and corruption policies creating an environment conducive to business respect for human rights were to be kept in focus. Stronger government leadership and cooperation to embed human rights in multilateral contexts, such as bilateral and multilateral investment agreements and global economic governance, were also urged.

9. The Forum addressed the expectation that Governments lead by example in their own economic activities not only as regulators but also in their capacity as business owners, investors and procurers, and that they tackle major current challenges, such as forced labour and modern-day slavery in supply chains. The emerging issue of "big data" and its

implications for the State duty to protect and the corporate responsibility to respect human rights was also on the Forum agenda.

2. National action plans

10. States were reminded about Human Rights Council resolution 26/22, in which the Council invited all States to develop national action plans on business and human rights and to report on progress. Participants in the discussions highlighted recent progress in this area, and a number of States provided an update, including information on national action plans and other relevant initiatives.

11. At the Forum session, the Working Group launched the final version of its guidance for States to support the development of national action plans. Other international actors also supported national action plan processes. One example included the United Nations Development Programme (UNDP), which supported the development of action plans at the country level in some regions of the world.

12. While the recent progress was welcome, participants emphasized that it was not the number of plans that mattered but rather their content and translation into practice. Key points for real progress included the need:

(a) To make national action plans or other relevant initiatives actionable and forward-looking rather than just a summary of existing government regulations, policies and activities;

(b) To allocate sufficient resources to allow for the implementation of national action plans, where applicable;

(c) To conduct broad-based multi-stakeholder consultations;

(d) To take into account the perspectives of affected individuals, groups and organs of society engaged in promoting and defending human rights in a business context while formulating national action plans or other relevant mechanisms;

(e) To take aspects of gender equality into account;

(f) To learn from business efforts to implement the Guiding Principles;

(g) To provide a platform in the United Nations to drive State leadership and peer learning, as well as stakeholder dialogue.

13. Participants in Forum discussions also highlighted the important role that national human rights institutions could play, and had been playing, in some countries in initiating national action plan processes, formulating content and monitoring progress of action plan implementation, and of other relevant mechanisms.

3. Regulatory approaches to drive corporate respect for human rights

14. The Forum examined new developments in regulatory approaches that address human rights due diligence for companies, including a number of regional and State initiatives.

15. It was noted that, while it was still too early to tell whether these and other developments represented a trend toward "mandatory" human rights due diligence and what impact recent regulatory and policy initiatives would have, the importance of a "smart mix" of binding and non-binding measures was underlined.

16. The discussions held by the Forum addressed developments in "emerging markets" in implementing aspects of the Guiding Principles through various policy and regulatory tools and initiatives.

17. It was acknowledged that the above-mentioned developments reflected progress, in that more Governments were being proactive and innovative in the regulatory field. Important aspects that required further steps included the need to clarify:

(a) How to ensure accountability in practice;

(b) What these and similar regulations offered in terms of access to remedy for victims of business-related abuses;

(c) What human rights due diligence meant in specific contexts, with a clear role for regulatory leadership to clarify concrete elements of corporate due diligence.

4. Leading by example

18. Forum discussions highlighted the role of the State as an economic actor and its importance to the State duty to protect human rights in a business context – and of State leadership and leverage in practice. In that regard, it was noted that there was a lack of attention paid to human rights impact and the responsibilities of State-owned enterprises, and to the duty of Governments that own or control them: and that unregulated, marred by conflicts of interests, a number of State-owned enterprises across the world were involved in adverse human rights impact. Selected good practices discussed during the Forum illustrate that it was both possible and in the best interests of States and State-owned enterprises to strengthen corporate governance of the enterprises, including to have robust requirements on human rights and sustainability. The recent report of the Working Group on State-owned enterprises and State ownership (A/HRC/32/45) offered detailed guidance for States to that end.

19. In the area of public finance, it was noted that a number of national export credit agencies and development finance institutions, and multilateral development banks, had well-established approaches to reviewing the social and environmental impact of transactions as part of their financing decisions. Only recently, however, had some started to explore the implications of business-related human rights due diligence (as understood in the Guiding Principles) for their current approaches.

20. During Forum discussions, it was emphasized that experience had shown the need to look beyond the narrow physical footprint of a project and to consider also the business relationships involved, where they might pose human rights risks to stakeholders, and to prioritize issues for attention where the risks were most severe. Human rights due diligence also meant looking at the full spectrum of internationally recognized human rights. It was noted that public financial institutions should pay greater attention to using their leverage to ensure that remedies were provided in practice, and that, generally, many export credit agencies and development finance institutions were still lagging far behind in their policies and processes to prevent human rights harm, including in the protection of human rights defenders who raise concerns about the impact of projects.

21. The Forum also addressed the role of public procurement, highlighting that transparency, and in particular supply chain transparency, was the first step towards holding businesses accountable for their impact on human rights. Some local Governments were already using their purchasing power to push for greater transparency. In order to increase the efficacy of public procurement to drive positive change in relation to human rights in supply chains, public bodies should collaborate more, for example through joint purchasing and the standardization of requirements.

22. The 2030 Agenda for Sustainable Development was considered another driver for more responsible public procurement models. In this regard, it was important for policy to be coherent with the Guiding Principles. Experience in integrating human rights considerations in public procurement suggested that collaboration and the sharing of

knowledge and experience between Governments were in scaling up effective practices. A common challenge that procurement officers and policymakers faced included the pressure to focus only on saving money. It was therefore important to create an institutional design that encouraged and rewarded procurement officers for looking at human rights concerns, instead of punishing them.

5. Integrating human rights in the context of investment

23. During discussions on international investment, participants noted that there was growing realization by States that they had to preserve more regulatory space for human rights in investment agreements. Different models were being developed for States to achieve this objective, with examples including the integration of human rights and corporate social responsibility (CSR) in bilateral investment agreements or models. More concrete guidance and leadership would, however, be needed in this area.

24. The particular challenges and opportunities of integrating the Guiding Principles into investment in "transition contexts" were also addressed. In any geography undergoing major social or economic transition, the private sector – and especially foreign investment – was seen to be an important actor for supporting those transitions. The experiences of a number of States suggested that the success of transition efforts hinged on the capacity of all actors, including investors, to recognize and react to the particular needs of the society in transition. It was noted that the role of host Governments in defining and communicating this common vision was important.

25. The role of home Governments was also addressed, in particular the importance of a clear view of the role of the private sector in facilitating a positive transition. Participants considered a case where a Government had requested, and received, several new clauses and requirements for investors in State-investor contracts, which both clarified the role of the private sector in pushing forward the transition to peace and provided the necessary protections to the State in recognition of its particular role in building peace.

26. The Guiding Principles both helped to frame the expectations of companies in transition contexts and offered a useful reference point as companies designed their approach to understanding the needs of societies in transition.

6. Role of Governments in addressing decent work in global supply chains

27. Participants in Forum discussions addressed the 2016 International Labour Conference and the plan of action of the International Labour Organization (ILO) Governing Body, putting them in a broader context of recent developments relating to responsible supply chain management and human rights. Several aspects concerning the role of Governments emerged.

- All States should start at home with the task of addressing decent work in supply chains, including by developing national action plans and other relevant mechanisms to promote and implement the Guiding Principles, and incentivizing companies to exercise human rights due diligence
- It is the responsibility of Governments to collaborate in creating a global "level playing field"
- More funding is required to support initiatives geared to strengthen institutional frameworks, such as labour inspectorates
- ILO standards provide important guidance, and the supporting role of ILO could be considered, as appropriate

- Continued coordination with other actors that address responsible supply chains and provide accountability mechanisms compliant with the Guiding Principles is necessary
- Public procurement and the activities of State-owned enterprises has an opportunity to contribute positively to decent work in supply chains compliant with the Guiding Principles and ILO standards

7. Slavery in supply chains: multi-stakeholder partnerships and regulations

28. The growing scale and complexity of modern slavery and trafficking, including in relation to the situation of migrants worldwide, was the focus of several Forum discussions.

29. Forum speakers noted that public-private partnerships to tackle this problem in cross-border supply chains were essential. The idea of partnerships was illustrated by an example relating to an international platform for such dialogue and cooperation, which involved platforms of both intergovernmental and multi-stakeholder cooperation.

30. It was noted that, in order for collective responses to be effective, they should:

(a) Promote good governance, inclusive growth and rule of law;

(b) Translate commitments into practical actions;

(c) Provide space for workers and trade unions to have a voice;

(d) Be built on the two ILO conventions on forced labour, where applicable;

(e) Take into account ILO guidelines for fair recruitment, given that exploitation was often possible at the recruitment stage.

8. Taxation and corruption

31. The Forum sought to shed light on the two key issues of the "money side" of business and human rights: taxation and corruption.

32. Participants emphasized that Governments had positive legal obligations to promote and protect human rights, and that taxation was one of the main tools to do so. This implied the corollary obligation of States not to give away their rights and tools, contrary to what was currently being witnessed in unjustified corporate tax incentives and the limiting of policy space under the terms of trade and investment agreements. If corporate tax policies were to live up to the spirit and purpose of the Guiding Principles, States could:

(a) Reform international tax rules to recognize transnational corporations as unified – not separate – entities in order to ensure that tax assessment was then done on a company-by-company rather than a country-by-country basis;

(b) Conduct independent assessments of the impact of the spillover effects of their corporate tax or related financial policies and practices on human rights;

(c) Ensure respect for the principle of transparency and access to relevant information concerning tax systems and the impact of trade and investment agreements on human rights.

33. The issue of corruption was raised throughout Forum discussions, demonstrating the extent to which corruption had significant and serious consequences for human rights. Participants emphasized that civil society and business often had the same aspirations: strengthening the rule of law, improving transparency, and combating corruption. Opportunities for enhanced multi-stakeholder collaboration and engagement should therefore be explored. One important issue was land investment, an area where corruption was rampant in many countries. Speakers stressed that the implementation of the principle

of free, prior and informed consent was essential. Where government actors themselves were engaged in corruption, investors and companies must exercise heightened human rights due diligence and make sure that land deals were not tainted by corruption.

B. Business leadership and leverage

1. Corporate culture, partnerships and board leadership

34. Business leaders speaking at the Forum stressed that demonstrating leadership meant exercising leverage over partners and stakeholders to ensure that human rights were protected and respected. To develop a culture where businesses understood that they served society, it was necessary to create a "learning organization" ensuring executives and managers met basic human rights expectations and considered lessons learned. A company embarking on a new venture should not approach affected communities by telling them how it thought they would benefit from the business operation, but should also ask the communities about what they wanted, and respond accordingly. Leverage over various stakeholders – including suppliers, contractors, retailers and Governments – could be exercised by demonstrating clearly the company's core values. Furthermore, a company's leverage could be strengthened through strategic partnerships, such as with the United Nations or non-governmental organizations.

35. The way in which boards helped to set the culture and values of a company was also highlighted. Boards could demonstrate leadership by creating an atmosphere where the opinion of stakeholders was taken into account by shareholders; ensuring that the executive managed the company responsibly; and anticipating challenges, such as business-related human rights risks. For example, board members could help to create and/or participate actively in business-related human rights task forces or steering groups that drew in cross-sectional departments, including global operations, compliance, legal, risk, policy and sustainability, to identify and respond to salient human right issues. While not many business-related human rights issues rose to the board level because a company should have processes in place to respond to them at a lower and more immediate level, it was important to foster a culture whereby the board and the executive were comfortable with openness and with hearing about problems. Forum participants were informed about initiatives to develop practical tools for corporate boards on aligning their activities with the Guiding Principles.

36. With regard to board leadership, it was noted that, in one example from the perspective of a board member of a large financial institution, the amount of leverage that a financial institution had in practice over clients would depend on four main areas: the amount that it invested; the tenure of the loan; the strength of the relationship with the client; and the number of other banks involved in the deal. At the same time, Governments tended to be the stakeholders over which it was most difficult to exert leverage. Furthermore, it took time to build a relationship with the relevant ministry or department.

2. Cross-functional teams

37. Business speakers at the Forum stressed that companies that followed national laws only and that focused on the local market were likely to face challenges when expanding their business operations to other areas. For example, one information and communications technology company had experienced this in its past, and had subsequently developed a company-wide policy and programme on human rights to bring in a dedicated, cross-functional team to help it to integrate the Guiding Principles into different operating contexts by means of meaningful stakeholder engagement. It had focused on building

relations internally so that more staff in different functions would understand how human rights issues intersected in their work.

38. Simultaneously, a company strengthened its engagement with external stakeholders when commissioning human rights impact assessments and ensuring that it was aware of outside trends and expectations, and could increase its leverage by acting collectively.

39. Another example provided was the experience of a company operating in the extractive sector. While some non-governmental organizations expected immediate results, it actually took time to properly embed human rights policies and practices in different company functions and operations. Rushing the process risked undermining the entire effort, as relevant policies would not have a lasting value or effect. A systemic approach could be more effective than an ad hoc one responding to individual incidents or cases only.

40. Another company explained that the greater focus on public disclosure or reporting had helped it to raise awareness internally of the importance of identifying and managing human rights issues.

3. Boards, lawyers and accountants

41. The Forum drew attention to three key functions understood to have leverage inside a company: the board, lawyers (in-house and external counsel) and accountants (management and chartered).

42. The company board was expected to address business-related human rights issues. It was noted that boards ought to ensure that they had an appropriate understanding of business-related human rights risks. It was important to take this aspect into account in decision-making in risk management systems both at the outset and during the operational life of a business line.

43. The important role played by lawyers in the uptake of the Guiding Principles was also addressed at various Forum sessions. It was noted that in-house and external counsel were currently adapting their role to help companies and clients to identify and respond to business-related human rights issues and opportunities in the area of contracts, including through a focus on employment practices and the supply chain, compliance and risk management, and dispute resolution. One idea explored was for businesses to set up specialized units within legal departments of corporate groups focusing on the prevention of business-related human rights abuses throughout the group's various business relationships and operations.

44. While the role played by chartered and management accountants and auditors was underexplored, Forum discussions showed that accountants and auditors were becoming more engaged in the business-related human rights agenda. The traditional focus on ethical behaviour as the cornerstone of every professional accounting body's code of conduct was seen as leverage for finance professionals also to incorporate respect for human rights in all of their various roles. When they collected, analysed, communicated and assured information, accountants could have enormous influence in an organization's actions with regard to human rights. Given the growth in demand for transparency, the importance of collecting data on business-related human rights issues in order to better inform the organization's stakeholders including management, investors, employees, consumers, suppliers and wider society, was noted. In this way, businesses would be able to better identify the business-related human rights issues most relevant to them.

4. Effective leverage in global supply chains

45. Participants in the Forum explored the human rights challenges that companies faced when sourcing raw materials, addressing how the traceability of a product's origin from

manufacture to the source of its component materials was of increasing importance to society. This shift in societal awareness meant that interest in such issues as human rights in the extractives sector were associated not just with mining communities but increasingly with the everyday objects in which the materials produced played a vital role. Transparency and access to information from the supply chain were underlined as essential to consumer-facing companies; however, achieving these objectives required the cooperation of multiple supply chain nodes, including intermediate industries and materials processers. The collaborative solutions of a variety of stakeholders, industry (both mining and downstream), investors and civil society were discussed to understand and mitigate the salient social and environmental impact of the extraction and processing of raw materials in supply chains. Given the multiplicity of initiatives, working collaboratively to make an impact for local communities was essential.

5. Operations in conflict contexts

46. Despite the heightened risk of business-related human rights abuses in conflict areas, it was still unclear how companies could integrate the provisions of the Guiding Principles in such settings. A mining company chief executive officer emphasized the need for businesses to understand and support the vision of local communities where they operated. Another example was given by the representative of a company that imported dried fruit and nuts from farmers in conflict areas, who stressed the challenges that businesses faced when trying to do the right thing in these settings, stating that "conflict is not black and white but a series of greys, and creates space for immoral entrepreneurs to gain ascendency." Forum participants pointed out that, to ensure that business did no harm, a robust human rights due diligence process had to be implemented, including by integrating considerations of the context of the conflict, the challenges of engaging with stakeholders, and the inclusion of conflict analysis in business-related human rights impact assessments.

6. Leverage in situations of direct linkage and disengagement

47. The Forum explored practical experiences and lessons learned of business and civil society practitioners on the operationalization of direct linkage and the use of leverage. The main lesson was that, by sharing understanding of the complexities that characterized situations of direct linkage, those involved could better realize the potential of direct linkage and leverage to drive positive outcomes on the ground. One practical step would be to generate case studies, evidence of outcomes and lessons learned from efforts to address situations of direct linkage by different stakeholders.

48. A specific "leverage challenge" posed was when and how to consider ending business relationships. As the Guiding Principles clarified, disengagement – and the threat of disengagement – should be a credible option when exercising leverage to prevent and address human rights abuses linked to a company's operations.

49. The commentary to Guiding Principle 19 explained that, in instances where a business lacked the leverage to prevent or mitigate an adverse impact and was unable to increase its leverage, it should consider ending the relationship, taking into account credible assessments of the potential adverse impact on human rights of doing so. A key consideration was the severity of the impact; the more severe the abuse, the more quickly the business should demand to see change before it took a decision on whether to end the relationship.

50. Participants in the discussions emphasized the importance of considering the specific context of different disengagement decisions. The point was also made that there is no legal framework regarding the question on disengagement.

51. Participants discussed a single case in which a fast-moving consumer goods company had decided to end a business relationship with a packaging supplier in a third country after discovering the use of child labour in its supply chain. Both companies explained how they had had to respond to the situation, including by examining carefully how the allegations of child labour affected the consumer goods company and the severity of the abuse, and how the packaging supplier should best address the harm caused.

52. The consumer goods company had left open the prospect of re-establishing the relationship with the packaging supplier if the abuse were adequately addressed. Consequently, the packaging company terminated its contract with its supplier that used child labour and accelerated its child labour remediation action plan to move affected children from work into schools and to compensate parents for loss of income, with skills development for additional income. As a consequence, the business relationship was restored.

53. Another example related to multi-stakeholder arrangements in the garment sector in one country, where the combination of collective leverage with the credible threat of disengagement had proved effective.

7. Responsible land-based investments

54. Discussions highlighted the fact that the way forward to achieve responsible land-based investments involved not only the Guiding Principles but also land-rights-specific instruments and guidance. Experience had suggested that communities and companies were able to consent as long as there was clear recognition of and respect for communities' land and natural resource rights, and trust among all stakeholders. Some companies had pledged to avoid making "land grabs", and recognized the importance of land rights throughout their supply chains and of raising industry standards. Whether responsible investments in land were made would, however, depend on the uptake, capacity and cooperation of all stakeholders.

8. Using the business case to advance human rights

55. The Forum examined the different arguments that various stakeholders – including non-governmental organizations, staff in different company functions, financiers and government representatives – used to persuade those in leadership positions to exercise their leverage to prevent or mitigate negative business-related human rights impact. This included when and how to effectively and appropriately use "the business case" for companies to respect human rights.

56. Speakers explained that the business case argument could be made in both negative and positive terms. On the one hand, causing or contributing to human rights harm could lead to significant costs to business – that were often not aggregated – such as delays to operations caused by strikes or protests, lost productivity, lost staff time in managing human rights-related disputes, reputational harm and, most significant of all, lost business opportunities. On the other hand, a positive case could often be made for companies to respect human rights, especially over the medium to long term. Doing so could help when hiring and retaining the best staff, and allow companies to create opportunities for increased value linked to future projects, expansion plans or sales that might otherwise not proceed if a business was mired in a human rights scandal.

57. It was noted that the "business case" argument gave rise to a legitimate concern: that companies should only respect human rights when it was in their narrow financial interests to do so. Making the business case was not, however, the same as engaging in a pure cost-benefit analysis. Experience showed that, when combined with an appeal to a company's values, the business case could be effective in bringing human rights to the attention of

decision-makers within a company (including the C-Suite, and financial and legal teams) or of investors.

58. Some participants emphasized that such arguments should be strengthened with better concrete evidence of the connection between human rights risk and the value of the business asset (such as a plantation or a road), and more examples of the effectiveness of deploying the business case in different sectors and operating contexts. Leading work had been done in the extractive sector and in relation to the quantification of land-related human rights risks, although other areas had received less attention. One field that could provide valuable lessons in this regard was the implementation of occupational health and safety standards in recent decades.

9. Investment ecosystems

59. The Forum gave increased focus on the role of financial actors in driving corporate respect for human rights. Participants from the investment community explored the concept of the "investment cycle" – from the perspective of asset owners, asset managers and private equity to the role of brokers, stock exchanges and rating agencies – and explained how investors currently intersected with human rights issues, such as through the traditional environmental, social and governance lens and through new efforts to better understand supply chains.

60. Participants pointed out that the investment cycle was very complex in terms of both participating actors and topics. Shedding light on whom each of these groups represented was just the beginning of the solution. What was really needed was greater cooperation between these groups and for them to find synergies by which to increase transparency. Transparency was important in order to ensure that human rights abuses were avoided. On the question of how asset managers could help asset owners to understand the work that was part of the due diligence mechanisms that they had put in place and to ensure that they were solid enough, civil society could play a significant role in uncovering risks and impact. Regulators could also help (and did). Ultimately, however, business did not wait for input once it was capable of devising interesting forms of collaboration. The Sustainable Stock Exchange Initiative was seen as a relevant example. It allowed companies to be praised for their sustainable practices and highlighted the value of collaboration among different players, directly involving also asset owners. Financial education for citizens at large and the importance of understanding how investors worked and taking into consideration the vested interests at stake in the debate were also raised.

61. Another question was the leadership role and leverage of institutional investors to foster business respect for human rights, addressing such issues as:

- How institutional investors actually screen for business-related human rights, due diligence and performance in practice
- To what extent investors can be involved in the business-related human rights issues, and whether it matters how much of a share they have in the company (the question of minority shareholders)
- The evolving understanding of fiduciary duty
- How institutional investors can drive change in the boardroom

62. A number of challenges that investors faced were addressed, largely concerning access to credible and meaningful information, and their poor understanding of human rights concerns. It was difficult to quantify the benefits of responsible investment because it was difficult to quantify human rights risks. Similarly, a huge number of investors and lawyers were not informed about business-related human rights issues and were therefore unable to apply standards meaningfully. Responsible investment should be understood as

making "prudent" investment decisions, not just "ethical" decisions, and that, in the case of ensuring the interest of beneficiaries, research showed that failing to integrate environmental, social and governance factors in decision-making led to a failure in fiduciary duty.

10. Transparency in the banking sector and engagement with civil society

63. Among issues relating to the banking sector, the Forum examined the human rights due diligence policies and processes that allowed commercial banks to identify and respond to negative business-related human rights impact, and how they could communicate their efforts internally (for example, across units) and externally in a meaningful way, and developments at the national level that were incentivizing better action and public reporting by banks.

64. One key challenge was reporting publically and maintaining client confidentiality. It was often not possible for banks to disclose any information about a client without the client's consent.

65. It was noted that banks had sometimes become disconnected from the "real" world and that they might consider putting more focus on the provision of a public service. One implication was the need for greater inclusion and engagement with those actually affected by a human rights impact. Speakers noted that it would be useful to develop a dialogue with other banks, non-governmental organizations and affected individuals or communities, and to consult more with experts and consultants on the ground. For example, during one discussion, participants highlighted how engagement with civil society and human rights experts about the risks involved in investments in conflict-affected areas or other contexts requiring heightened due diligence would be beneficial.

11. Influence of insurance companies

66. For the first time, the Forum explored the role of the insurance industry – risk managers, risk carriers (insurance providers), and investors – in promoting sustainable development and human rights. Participants discussed how insurers managed environmental, social and governance issues, including human rights issues, in their core business operations, and how they could take human rights into account in their business relationships. They explored the role of Governments in promoting respect for human rights and in maintaining oversight of the insurance industry, and learned about the possible links between the Guiding Principles and the Principles for Sustainable Insurance (launched at the United Nations Conference on Sustainable Development), a global sustainability framework and the largest collaborative initiative between the United Nations Environment Programme Finance Initiative and the insurance industry.

C. New models of action and accountability

67. The Forum addressed the relationship between the Sustainable Development Goals and the Guiding Principles. An important message from the discussion was that, for business to *maximize* its contribution to sustainable development, it must make efforts to *advance* respect for human rights.[2]

68. It was noted that the Guiding Principles articulated how businesses were expected to contribute to the social components of the Sustainable Development Goals; there was

[2] See in particular www.ohchr.org/Documents/Issues/Business/ForumSession5/Statements/JohnRuggie.pdf.

currently a risk, however, in some narratives in the business community that could weaken or even sever the link between the Goals and the Guiding Principles, for example, when business was encouraged to think that advancing respect for human rights meant merely doing no harm, and that to do positive good it had to go beyond respecting rights. Instead, it was emphasized that, when companies drove respect for human rights across their own operations and their global value chains, they generated a large-scale positive impact on the lives of people who may be most in need of the benefits of sustainable development.

69. Five specific concerns were highlighted:

(a) There was the impression that, because the General Assembly, in its resolution 70/1, in which it adopted the Sustainable Development Goals, only mentioned the Guiding Principles in passing, they were less important than ensuring that business engage in the Goals on any terms;

(b) The limitations of the "creating shared value" paradigm that a large number of companies were drawing on to contribute to the Sustainable Development Goals, as it rested on the notion of compliance with law and ethical standards, which was not often the case in practice;

(c) That companies would pay attention selectively to only some of the 17 Sustainable Development Goals, driven exclusively by considerations of business risk or opportunity;

(d) Emerging strategies gave the false impression that making a "mature" and "transformative" contribution to the Sustainable Development Goals involved looking for new business opportunities, while acting responsibly on issues such as human rights was less "disruptive" or had a lesser impact;

(e) There was an incorrect assumption that respecting human rights was merely about stopping a negative practice (largely through compliance) and that doing so lacked the more inspirational virtue of making a positive contribution (actions that traditionally fell under the model of corporate social responsibility, of voluntary efforts to promote human rights).

70. It was noted in Forum discussions that respecting human rights under the Guiding Principles actually meant both doing no harm – such as not discriminating against people on any grounds – and bringing an affirmative change to people and workers, such as by creating a culture of inclusion and diversity to empower workers. Moreover, effective promotion and implementation of the Guiding Principles across global supply chains was considered to be an important potential contribution to realizing the Sustainable Development Goals.

1. Transparency and innovative collective approaches to protect and respect labour rights in global supply chains

71. The Forum began its focus on supply chains with an assessment of rankings of certain sectors, including information and communications technology, food and beverage, and apparel and footwear under one initiative that helped companies and investors to understand and address forced labour risks in their supply chains. Participants highlighted that:

(a) Workers could be exploited at any stage of a supply chain;

(b) It was important for companies to be open about the challenge (a paradigm shift already being witnessed in the food and beverage sector);

(c) It was important for companies to better understand their workforce supply chain (namely, identifying workers at risk, where people came from, and the routes that they take);

(d) Companies were expected to take measures to be more transparent throughout their supply chains.

72. Participants in discussions on the 2016 International Labour Conference reiterated the central question of managing the tension between the important contribution of global supply chains to economic development (including through their promotion of the transition of informal work to formal work, their role in job creation and skills development, especially for women and young people and their promotion of technology transfer, and their contribution to "decent work deficits" (in areas like health and safety, wages and working time). The key tenets of the "programme of action" to eliminate decent work deficits included a focus on building and strengthening knowledge; capacity-building; advocacy and communications; advice and technical assistance; and partnerships and policy coherence.

73. Participants also examined specific collaborative approaches to ensure respect for human and labour rights in supply chains.

74. The Forum considered an initiative on living wages in the garment sector that brought together international brands and retailers, manufacturers and trade unions; identified the role and responsibilities of each actor, and how, if taken together, they could support living wages in a scaled-up, sustainable, industry-wide approach. The aim was to improve wages in the industry by establishing industry collective bargaining in key garment and textile sourcing countries, supported by world class manufacturing standards and linked to responsible purchasing practices. Industry-wide agreements set a benchmark that applied to all manufacturers, while still allowing for individual manufacturers to offer higher pay and conditions.

2. Engagement with small and medium-sized enterprises on business and human rights

75. Findings from a survey presented at the Forum suggested that awareness of human rights risks by small and medium-sized enterprises was growing, and that they were eager for support in meeting their responsibilities. Nonetheless, better engagement was needed, including:

- More capacity-building, especially at the regional and national levels
- More support from Governments
- More efficient communication with small and medium-sized enterprises
- Clearer and more compelling presentation of business-related human rights issues and expectations in an understandable language

3. Multi-stakeholder partnerships in tackling human rights challenges and issues

76. The Forum also explored existing and new partnerships between Governments and business on the one hand, and other actors on the other, to tackle systemic issues such as business-related abuses concerning security forces, human trafficking and business-related human rights issues associated with mega-sporting events.

77. A session was held on human rights and model clauses between Government security forces and companies. Forum participants considered a new guidance tool that helped Governments and businesses to understand how to include human rights in public security agreements. Promoting and entrenching respect for human rights could be a challenge for government agencies, especially in fragile environments, and firms

increasingly sought security agreements to be able to protect site investments more effectively.

78. Participants considered an example of a public-private sector partnership aimed at to tackling human trafficking and slavery at the regional level. The opportunity to bring committed companies together to do the tough work necessary to discover and address issues, and to identify the remedial action needed as a consequence, were highlighted as advantages of such international multi-stakeholder approaches.

79. Forum participants also discussed the ways to promote respect for human rights among companies engaged in the organization of mega-sporting events throughout their lifecycles.

D. Access to remedy and the need for protecting affected persons in vulnerable situations

1. Affected individuals, groups and organs of society engaged in promoting and defending human rights in a business context

80. Discussions on access to remedy included the accounts of stakeholders who had been directly affected. Participants noted that listening to the stories of victims at the Forum was essential in order to allow the target audience (States and businesses, in particular) to become more sensitive to the experiences of rights-holders.

2. Protection of individuals, groups and organs of society engaged in promoting and protecting human rights in a business context

81. Forum participants listened to several personal stories told by civil society and community representatives who had suffered from severe human rights harm in a business context.

82. A particular concern noted by a number of Forum speakers was the targeting of individuals who had spoken up against a human rights impact on communities caused by investment projects across different regions. The industries involved included mining, agribusiness, hydroelectric dams, and logging. It was noted that indigenous peoples accounted for a disproportionate number of all victims.

83. Forum discussions stressed that it was time to seriously consider how to unite the collective power of business, civil society and Governments to address this issue. More engagement between a range of actors was important at all levels, even if discussions were at times difficult. The examples of corporate actors willing to take action in this regard were encouraging.

3. Mechanisms to protect the rights of persons in vulnerable situations

84. Key points emerging from discussions on the protection of human rights of persons in particularly vulnerable situations included those described below.

85. As highlighted by indigenous peoples representatives speaking at the Forum, in order to protect effectively the rights of indigenous peoples affected by business activities, challenges still arose with regard to the effective promotion of the right to self-governance; free, prior and informed consent; and the full and effective participation of affected communities. The Forum addressed not only the impact of agribusiness and extractive industries, but also the apparent paradox where investments geared towards fighting climate change, such as renewable energy projects, had an adverse impact on indigenous peoples. The construction of hydroelectric dams and wind farms on indigenous lands were relevant

examples. Participants also drew attention to potential good practice models of engagement between indigenous organizations and State actors, and collaboration between indigenous communities and business through contractual arrangements.

86. States could build effective mechanisms for consultations with and the participation of indigenous peoples. The role of Governments in this regard was important, as was that of the private sector, bodies representing indigenous people, and trade unions. For progress to be made, there was a need to build trust among the different stakeholders involved and to increase support for the individuals, groups and organs of society engaged in promoting and defending human rights in a business context, including from the private sector.

87. The perspective of gender equality was not adequately reflected in business and human rights discourse, in particular in national action plans and other relevant mechanisms, even though the Guiding Principles stated that business enterprises should respect the rights of women where they may have an adverse impact on them.

88. Business could play a positive role in addressing discrimination against different minorities. Participants highlighted the importance of engagement and consultation when developing approaches to tackle this issue. They considered examples of companies demonstrating leadership and of collective approaches. Participants discussed a number of existing relevant guidelines for companies, the basic principles of which were a policy commitment to respect the rights of minorities; the elimination of discrimination; access for all to products and services; and support for staff groups.

89. References to persons with disabilities in the 2030 Agenda for Sustainable Development contributed to the momentum of private sector engagement in disability inclusion, including in developing countries. Forum speakers pointed out that peer-to-peer company support was crucial for the promotion of rights of persons with disabilities by business and the benefits of collaboration between the private sector and civil society.

4. Stepping up access to remedy for business-related human rights abuse

90. The Forum discussed some of the main initiatives taken to address the struggle of victims of business-related human rights abuses to gain access to effective remedies, including the discussions held by the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, and the outcome of the OHCHR Accountability and Remedy Project that was presented to the Human Rights Council at its thirty-second session (see A/HRC/32/19).

91. The OHCHR guidance on addressing barriers to judicial remedy and enhancing the effectiveness of domestic legal systems, taking into account different legal systems, cultures, traditions and levels of economic development, was highlighted by a range of speakers. Stakeholders from Governments, national human rights institutions, civil society and business considered provisions relating to law, policies and practice that could make domestic legal systems more effective in responding to business-related human rights challenges.

92. Many speakers noted that that the main barrier to accountability and access to remedy was the implementation of already existing judicial protection of human rights at the national level and the promotion of the Guiding Principles, while others stressed the need for an international legally binding instrument to hold business accountable.

93. Experiences from cross-border cases seen through the perspective of victims discussed at the Forum showed, among other things, that:

(a) There was inadequate enforcement of relevant local laws;

(b) The persecution of victims of business-related human rights abuses tended to discourage victims from coming forward;

(c) Access to legal representation was a major barrier for victims;

(d) Operational-level grievance mechanisms were not enough for cases addressing situations of serious human rights violations.

94. The Forum provided an opportunity for updates on the process of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, which has also been mandated to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises with respect to human rights. At its third session, to be held from 23 to 27 October 2017, the working group is expected to prepare elements for discussion for a possible legally binding instrument. Forum participants noted that efforts to formulate a legally binding instrument and promotion and implementation of the Guiding Principles were not contradictory. Common points of understanding for the way forward included the importance of involving more States in the process; the need to take into account the opinions of stakeholders, including directly affected persons and representatives of business; and the ultimate goal of the process, namely, to strengthen the protection of business-related human rights.

5. Complex corporate structures

95. The Forum addressed the degree to which corporate group structures protected companies from the consequences of adverse human rights impact, including legal accountability. The discussion was held in the context of the challenges facing victims of corporate-related human rights abuses in many countries when seeking judicial remedy through claims against subsidiaries. This was a well-recognized problem, and the concept of separate legal personality could be a factor preventing such victims from bringing human rights-related claims against parent companies in their home States.

96. Participants noted that there were a number of commercial reasons why seemingly complex corporate structures might be used but that were not connected to a desire of a parent company to avoid liability for human rights-related abuses. Many of the key business relationships would be contractual rather than corporate in nature, and, as companies were careful with their reputations, they were unlikely to rely on legal structures if a subsidiary was alleged to be responsible for business-related human rights abuses.

97. The above discussion helped to highlight the importance of focusing on the broader concept of business relationships, as advocated by the Guiding Principles, when attributing responsibility for business-related human rights harm rather than solely on the parent/subsidiary dynamic. It is important to provide victims with an opportunity to seek effective remedy through different means in accordance with the international obligations and national legislation of their home States.

6. Non-judicial grievance mechanisms

98. Participants in discussions on State-based non-judicial grievance mechanisms highlighted that:

(a) There were existing models to draw from in terms of thinking about State-based non-judicial remedy mechanisms for business and human rights cases, including ombudsmen offices, ILO conciliation, and dispute resolution by means of government-data-protection authorities;

(b) Existing models had to be considered when designing next-generation mechanisms for providing State-based access to remedy outside of the judicial system; the

Forum heard about one recent initiative to design model legislation for the establishment of the office of an independent human rights ombudsperson for the international extractive sector;

(c) The OHCHR project to identify and analyse lessons learned, best practices, challenges and possibilities to improve the effectiveness of State-based non-judicial mechanisms, as requested by the Human Rights Council in its resolution 32/10, would explore these aspects further.

99. Experiences from operational-level grievance mechanisms and remedy frameworks were also featured and highlighted in particular elements of effectiveness and legitimacy of such processes. This included the needs for:

(a) Not excluding access to judicial remedies;

(b) Enabling continuous engagement with victims, as their participation in designing such mechanisms was important;

(c) Allowing affected communities prompt access to and support from relevant national legal structures if direct communication with the company proved to be difficult;

(d) Managing expectations carefully, explaining clearly the outcomes to the affected communities, putting in place checks that claimants understand the outcomes, and focusing on expedient delivery of remedies;

(e) Ensuring that remedial solutions that involved monetary compensation were handled carefully and were based on a deep understanding of cultural sensitivities and the local context.

100. Participants discussing operational-level grievance mechanisms also highlighted the complexities that parties faced on the ground in situations of alleged business-related human rights abuses, with one challenge being the issue of identifying victims when allegations involved serial abuse. In this regard, close coordination between various actors, both international and local ones, could be useful. Another element that added to the complexity of functioning operational-level grievance mechanisms – and of addressing business-related human rights abuses in the first place – was when the rule of law was not strong enough. In this regard, the lack of contribution by government actors to this debate was noticeable.

101. Many speakers, including the members of the working group, considered the possible advantages of further guidance on designing an operational-level grievance mechanism consistent with the Guiding Principles.

102. The Forum also sought to address two of the main themes of the agenda by exploring the "leverage of money" in supporting more effective access to remedy. In discussions, participants stressed the importance of:

(a) Encouraging companies linked to adverse business-related human rights impact to increase their leverage (under Guiding Principle 19) in innovative ways, including by increasing their financial contributions, applying intellectual and managerial expertise, or using their convening power to bring other relevant stakeholders to the table;

(b) Awareness-raising initiatives among communities, including by providing more information about the range of entities in the investment chain, and relevant safeguard policies where development banks are involved;

(c) Transparency of lenders, given that multilateral development banks were increasingly funding projects through financial intermediaries, and that it was difficult for communities to trace the money;

(d) Grievance mechanisms becoming more accessible for communities;

(e) Seeking creative ways to engage with investors, lenders and buyers, including by reaching out through third parties;

(f) Innovative strategies in cases where money had already been disbursed by a lender; while lenders may have ceased a particular loan for the project in question, they might continue to hold leverage owing to their funding of the same company in other projects.

III. Conclusions

103. **Participants noted that the level of interest and participation in the Forum reflected the importance of the business and human rights agenda. A range of stakeholders welcomed in particular the greater participation and engagement of business, which was seen as important for moving the agenda forward.**

104. **In particular, business and civil society stakeholders at the Forum encouraged Governments to engage more actively, pointing to the fact that Governments played an important role in the success of the business and human rights agenda, and that they currently lagged in their promotion and implementation of the Guiding Principles. In this regard, there was an opportunity to use the Forum in 2017 to encourage Governments to become more engaged. Participants in the 2016 Forum had discussed ways of supporting the individuals, groups and organs of society engaged in promoting and defending human rights in a business context, including from the private sector, without compromising stakeholder independence. In this regard, the importance of government funding of national business-related human rights initiatives was highlighted. Business speakers also specifically encouraged Governments to consider increasing their funding for the Forum.**

105. **Another overall observation was that the business and human rights agenda was closely linked to the wider global debate on sustainable development and "ethical globalization". The field of business and human rights should, however, connect with a wider audience.**

106. **Participants noted that it was encouraging to witness the increased participation of new business actors and more involvement by the Global South, and in particular from Asia. Another encouraging sign was the participation of business executives, who were important actors in mainstreaming the Guiding Principles in the private sector. Participants had also highlighted the potential for learning from other relevant fields.**

107. **The announcement that the 2017 Forum, to be held from 27 to 29 November, would include a major focus on the third pillar of the Guiding Principles – access to remedy for victims of business-related human rights abuses – was welcomed by a range of stakeholders. They considered that it would be a great opportunity for strengthened multi-stakeholder dialogue on practical solutions and innovations in realizing the human rights of people affected by business activity.**